

Mitchell & Slaven, Inc. and International Brotherhood of Painters and Allied Trades, Local Union 203, AFL-CIO, CLC. Case 17-CA-16366

March 10, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Union on October 2, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Mitchell & Slaven, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 8, 1993, the General Counsel filed a Motion for Summary Judgment. On February 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated January 3, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business January 15, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Springfield, Missouri, has been engaged in the construction industry as a drywall con-

tractor. During the 12-month period ending October 31, 1992, a representative period, the Respondent, in the conduct of its operations, purchased and received at its Springfield, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about July 21, 1987, and at all material times, the Union, by virtue of Section 9(a) of the Act, has been the designated limited exclusive bargaining representative of the Respondent's employees in an appropriate unit and, since about the same time, has been recognized as such by the Respondent.¹ The Respondent's recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 1991, to March 31, 1994. At all times since about July 21, 1987, the Union, by virtue of Section 9(a) of the Act, has been the exclusive limited collective-bargaining representative of the Respondent's unit employees. The appropriate bargaining unit consists of:

All employees employed by Mitchell & Slaven, Inc. at its Springfield, Missouri facility who perform work which has been historically and traditionally performed by members of the Brotherhood of Painters and Allied Trades, AFL-CIO, in the following counties: In Missouri—Hickory, Polk, Greene, Christian, Stone, Taney, Ozark, Douglas, Howell, Webster, Wright, Dallas, McDonald, Newton, Jasper, Barton, Vernon, Barry, Lawrence, Dade, Cedar, and St. Clair; In Oklahoma—Delaware, Ottawa, and Craig; In Kansas—Cherokee, Montgomery, LaBette, Neosho, Wilson, Elk, and Chautauqua; EXCLUDING estimators, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

Since about April 2, 1992, the Respondent, without the Union's consent, has failed to continue in effect all the terms and conditions of its agreement with the Union by failing to file monthly reports of hours worked by unit employees, failing to remit payments owed to the Health and Welfare Fund, the Pension

¹ The complaint's commerce data and unit description suggest that the Respondent is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. Accordingly, in the absence of an allegation that the bargaining relationship is actually based on 9(a) majority support, we find that the relationship was entered into pursuant to Sec. 8(f), and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, *Electri-Tech, Inc.*, 306 NLRB No. 138, slip op. at 3 fn. 2 (Mar. 16, 1992) (citing *John Deklew & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

Fund, and the Apprenticeship Training Fund on behalf of unit employees, and failing to remit to the Union the dues deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by the employees. The above terms and conditions of employment constitute mandatory subjects of bargaining. We find that by engaging in such conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the unit employees' exclusive bargaining representative within the meaning of Section 8(d) of the Act, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing to file monthly reports of hours worked by unit employees, failing to remit payments owed to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund, and failing to remit to the Union the dues collected from unit employees' pay pursuant to valid dues-checkoff authorizations executed by the employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to comply with the terms and conditions of its agreement with the Union by filing the monthly reports of hours worked by unit employees that have not been filed since about April 2, 1992, to remit the payments owed to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund that have not been made since about April 2, 1992,² and to remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by said employees but which have not been sent since about April 2, 1992, with interest, to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent will also be required to make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms and conditions of its agreement with the Union, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest to be computed in the

manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Mitchell & Slavens, Inc., Springfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms of its collective-bargaining agreements with International Brotherhood of Painters and Allied Trades, Local Union 203, AFL-CIO, CLC, which is the exclusive limited collective-bargaining representative of Respondent's employees in an appropriate unit, by failing to file monthly reports of hours worked by unit employees, failing to remit payments owed to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund on behalf of unit employees, and failing to remit to the Union the dues deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by unit employees. The appropriate bargaining unit consists of:

All employees employed by Mitchell & Slavens, Inc. at its Springfield, Missouri facility who perform work which has been historically and traditionally performed by members of the Brotherhood of Painters and Allied Trades, AFL-CIO, in the following counties: In Missouri—Hickory, Polk, Greene, Christian, Stone, Taney, Ozark, Douglas, Howell, Webster, Wright, Dallas, McDonald, Newton, Jasper, Barton, Vernon, Barry, Lawrence, Dade, Cedar, and St. Clair; In Oklahoma—Delaware, Ottawa, and Craig; In Kansas—Cherokee, Montgomery, LaBette, Neosho, Wilson, Elk, and Chautauqua; EXCLUDING estimators, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) File the monthly reports of hours worked by unit employees that have not been filed since about April 2, 1992, remit the payments owed to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund that have not been made since about April 2, 1992, and remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by employees and which have not been remitted since about April 2, 1992, with interest as set forth in the remedy section of this decision.

² Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms of its agreement with the Union, with interest as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Springfield, Missouri, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of our collective-bargaining agreement with International Brotherhood of Painters and Allied Trades, Local Union 203, AFL-CIO, CLC, which is the designated exclusive limited bargaining representative of our employees in an appropriate bargaining

unit, by failing to file monthly reports of hours worked by unit employees, failing to remit payments to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund on behalf of unit employees, and failing to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations. The appropriate bargaining unit consists of:

All employees employed by us at our Springfield, Missouri facility who perform work which has been historically and traditionally performed by members of the Brotherhood of Painters and Allied Trades, AFL-CIO, in the following counties: In Missouri—Hickory, Polk, Greene, Christian, Stone, Taney, Ozark, Douglas, Howell, Webster, Wright, Dallas, McDonald, Newton, Jasper, Barton, Vernon, Barry, Lawrence, Dade, Cedar, and St. Clair; In Oklahoma—Delaware, Ottawa, and Craig; In Kansas—Cherokee, Montgomery, LaBette, Neosho, Wilson, Elk, and Chautauqua; EXCLUDING estimators, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL file the monthly reports of hours worked by unit employees that have not been filed since about April 2, 1992, WE WILL make payments owed to the Health and Welfare Fund, the Pension Fund, and the Apprenticeship Training Fund on behalf of unit employees that have not been made since about April 2, 1992, and WE WILL remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by said employees, and which have not been remitted since about April 2, 1992, with interest.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to continue in effect all the terms and conditions of our agreement with the Union.

MITCHELL & SLAVENS, INC.